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United States of America

In the Supreme Court of the United States

October Term 1946

No. 52

Arch R. Everson,
Appellant,

v.

Board of Education of Township of Ewing, et al.,
Respondents.

Brief of Attorney General of Michigan as Amicus Curiae.

Foss O. Eldred,
Attorney General for the State of Michigan.

Edmund E. Shepherd,
Solicitor General for the State of Michigan.

Daniel J. O'Hara,
Assistant Attorney General for the State of Michigan.

Amicus Curiae.

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We do not have a copy of the record or briefs in the case at bar and because of the shortness of time before argument and because our legislature has adopted similar legislation to that of New Jersey we hasten to state our position on the constitutionality of the statute here challenged.

Our statute, Sec. 15.457, Mich. Stats. Ann., 1945 Cum. Supp. reads as follows:

> "The board of education of any school district may enter into a contract with any other district or with private individuals to furnish transportation for non-resident pupils attending such school or attending public schools in other districts: *Provided, however,* That in no event may the price paid for such transportation be less than the actual cost thereof to the district fur-

nishing the same. The district board or board of education of any school district may furnish transportation for resident pupils to educational programs at county or community fairs, to health clinics in or outside of the school district, and to educational functions in any other school district or community. Any board furnishing transportation may purchase buses on contract, pledging money in the general fund or funds received from appropriations from the general fund of the state for aid in the support of the public schools.

"The board of education of any school district which furnishes transportation for resident pupils may furnish transportation for children residing within the district who attend private or parochial schools of elementary or high school grades: *Provided*, That such schools comply with the provisions of Act No. 302 of the Public Acts of 1921. Such children may be transported without charge along the regular route of the public school bus or conveyance nearest or most easily accessible to their homes, to such private or parochial school or to the point along such regular route which is nearest or most accessible to such private or parochial school: *Provided*, That nothing contained in this section shall be construed to require or permit transportation of pupils to a private or parochial school attending in the primary grades where such transportation is furnished by the district for high school pupils only, nor to require or permit the transportation of pupils to a private or parochial school attending the high school grades where such transportation is furnished by the district for primary pupils only."

Former Attorney General Thomas Read on March 14, 1939, in an opinion addressed to Hon. Joseph A. Baldwin, of the Michigan State Senate, exhaustively considers the

constitutionality of a proposed House Bill permitting the transportation to and from school of pupils attending private or parochial schools.

We print the opinion as Appendix 'A'.

The opinion referred to is still the opinion of the Attorney General of Michigan.

We regret that the pressure of time prevents us from analyzing and appraising the decisions dealing with the subject matter here involved but several law review articles and case comments thoroughly discuss the cases, and we refer to such articles in a bibliography, Appendix 'B'.

Conclusion

We respectfully submit that in view of the fact that this court has upheld the expenditure of public funds to supply textbooks to students in parochial schools that the statute here challenged should be sustained and that the Fourteenth Amendment does not prohibit the enactment of legislation of the type enacted in New Jersey or Michigan.

Respectfully submitted,

Foss O. Eldred,
Attorney General for the State of Michigan.

Edmund E. Shepherd,
Solicitor General for the State of Michigan.

Daniel J. O'Hara,
Assistant Attorney General for the State of Michigan.